

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Mary Ann Grilli and Hon. Michael Nash, Co-Chairs
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DATE: July 30, 2003

SUBJECT: Juvenile Law: Appellate Counsel Access to Court Records and
Procedure for Distributing Juvenile Appellate Briefs
(amend Cal. Rules of Court, rules 1423 and 39.1) (Action Required)

Issue Statement

Practitioners representing clients in juvenile appellate matters report frequent confusion about the role of an appellate attorney in juvenile court proceedings and have requested clarification in the rules to include them expressly among counsel who are allowed to have access to juvenile case records without obtaining a court order authorizing such access. Practitioners also report that some counties are not providing the required number of copies of appellate briefs to the practitioners and are not providing a copy of each appellate brief to the appellate project.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council effective January 1, 2004,

1. Amend rule 1423 to clarify that appellate counsel are within the definition of counsel who can inspect the juvenile court files of their clients; and
2. Amend rule 39.1 to clarify the required number of copies of appellate briefs that counties must provide to appellate practitioners and to the appellate project, and make a technical change in accordance with required Administrative Office of the Court style guide for Rules of Court.

The texts of the amended rules are attached at page 5.

The relevant text of Welfare and Institutions Code section 827 is attached for reference at page 6.

Rationale for Recommendation

Welfare and Institutions Code section 827(a)(1)(E) and rule 1423 provide that attorneys for the parties in juvenile court cases have the right to inspect juvenile case files. Appellate counsel appointed in juvenile cases report, however, that they are denied the right to inspect case files in some counties. The amendment to rule 1423 would clarify that appellate counsel for the parties are included within the description of “counsel.”

The amendment would clarify the definition of “counsel” in juvenile cases. The amendments would increase the efficiency of counsel by permitting them to research and monitor juvenile cases in which they are appointed as counsel on a related appeal. Appellate counsel on related appeals or writs are attorneys for one of the parties to the underlying case and have the same right to inspect case files as do trial counsel.

Practitioners also report that some counties are not providing the required number of copies of appellate briefs. Rule 37, which applies to criminal appellate proceedings, requires the People to serve two copies of their briefs on appellate defense counsel, with one copy designated to be provided to the client. Juvenile appellate practitioners have requested that rule 39.1 be amended to be consistent with rule 37.¹ Practitioners who represent parties in a juvenile case are reimbursed through appellate projects that must receive a copy of each brief to supervise the work of the appellate counsel and monitor the amount of requested fees. Appellate practitioners report they would save time and money if the county child welfare department would directly distribute a copy of every brief to the relevant appellate project.

The proposal would also change the wording in rules 1423(b) and 39.1 from “shall” to “must” in accordance with the Administrative Office of the Courts style guideline for Rules of Court. Another technical change is the addition of a cross-reference to rule 44.5 in rule 39.1, because this rule references service on the Attorney General, which is discussed in the first sentence of Rule 39.1.

Alternative Actions Considered

No alternative actions were considered because the Family and Juvenile Law Advisory Committee believes the amendments are the most efficient and cost-effective method to implement the necessary changes.

¹ Rule 39, provides that the rules governing appeals from the superior court in a criminal case are applicable to all appeals from the juvenile court.

Comments From Interested Parties

The proposal was circulated for comment in the spring 2003 cycle. It was sent to the regular RUPRO mailing list and posted on the web. It was also sent to California Appellate Defense Counsel.

A total of nine comments was received. The comments and the committee responses are summarized in the chart attached at pages 7–11. Three of the commentators agreed with the proposed amendments; the other six agreed only if modifications were made to the proposal for rule 1423.

The six commentators expressed concern that the amendment to rule 1423 would allow attorneys representing parties to juvenile cases in unrelated judicial or administrative matters to inspect juvenile court files.

One commentator stated that the language was unnecessarily broad and would permit inspection in instances unrelated to the juvenile court case.

Another commentator believed that sensitive records should not be subject to open-ended inspection by counsel in other proceedings without the protection of a court order. This commentator also questioned whether the amendment went far enough in allowing appellate project attorneys, including staff and supervisory counsel, access to underlying juvenile trial court files.

Another commentator asserted that the amendment would be in direct conflict with Welfare and Institutions Code section 827 and would be found void. This commentator believed that it is the juvenile court that must determine whether, balanced against the right of privacy, an attorney in another proceeding has a need that justifies disclosure of the juvenile court file.

Another commentator wrote that the proposed language is problematic because it undermines the important policy objective of protecting confidentiality of information concerning children.

The remaining commentators expressed disagreement with expanding the right to inspect juvenile court files to attorneys representing parties in judicial or administrative matters that are unrelated to the underlying juvenile court case or to appeals or writs related to the underlying case.

The proposal, as circulated, further expanded the definition of counsel who may inspect juvenile court records without obtaining a court order to include the party's appellate counsel in the dependency proceeding as well as counsel representing parties in an unrelated judicial or administrative proceeding, but not in the underlying dependency proceeding. In response to comments received, the expanded definition

of counsel to include counsel representing a party solely in unrelated proceedings has been withdrawn from the current proposal

No comments were received regarding the remaining amendment to rule 1423(b) clarifying that appellate counsel can inspect juvenile court files. A technical comment was made regarding cross-referencing rule 44.5 in rule 39.1 and that change has been added to the proposal.

Implementation Requirements and Costs

Implementation of the proposal may result in some additional cost to the courts for additional labor by clerks or other court staff in working with appellate counsel to facilitate their inspection of juvenile court files.

County child welfare departments will have slightly increased photocopying costs for additional copies of appellate briefs to appellate projects. They also may have additional postage costs for distribution to the appellate projects.

Attachments

Rules 1423 and 39.1 of the California Rules of Court are amended, effective January 1, 2004, to read:

Rule 1423. Confidentiality of records (§§ 827, 828)

(a) ***

(b) **[Inspection]** Only those persons specified in sections 827 and 828 may inspect juvenile court records without authorization from the court. Counsel who are entitled to inspect juvenile court records include any trial court or appellate attorney representing a party in the juvenile court proceeding. Juvenile court records may not be obtained or inspected by civil or criminal subpoena. Authorization for any other person to inspect, obtain, or copy juvenile court records must be ordered by the juvenile court presiding judge or a judicial officer designated by the juvenile court presiding judge.

In determining whether to authorize inspection or release of juvenile court records, in whole or in part, the court ~~shall~~ must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public. The court ~~shall~~ must permit disclosure of, discovery of, or access to juvenile court records or proceedings only insofar as is necessary, and only if there is a reasonable likelihood that the records in question will disclose information or evidence of substantial relevance to the pending litigation, investigation, or prosecution. The court may issue protective orders to accompany authorized disclosure, discovery, or access.

(c)–(i) ***

Rule 39.1. Special rule for dependency and freedom from custody appeals

(a)–(c)***

(d) **[Copies of briefs]** Notwithstanding rules 16(c), 37(a) and 44.5, the parties ~~shall~~ must not serve briefs on the Attorney General or the district attorney unless that office represents a party. If the Court of Appeal has appointed appellate counsel for any party, the county child welfare department must serve two copies of its briefs on that counsel and one copy of its briefs on the appellate project for the district, if applicable.

(e)–(f)***

Welfare and Institutions Code section 827

827. (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

- (A) Court personnel.
- (B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.
- (C) The minor who is the subject of the proceeding.
- (D) His or her parents or guardian.
- (E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F)–(M) ***

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**Juvenile Law: Appellate Counsel Access to Court Records and Procedure for Distributing Juvenile Appellate Briefs
(amend Cal. Rules of Court, rules 1423 and 39.1)**

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Robert Gerard, Esq. President Orange County Bar Association	AM	Y	The language of the amendment would permit counsel who are representing any party in a juvenile court proceeding to inspect juvenile court records in the pending juvenile matter and “in any other pending judicial or administrative proceeding.” This language is unnecessarily broad and would permit inspection in instances unrelated to the juvenile court case. Recommend that the proposed amendment be changed to read as follows: “ Counsel who are entitled to inspect juvenile court case files include the appellate attorney for a party on a matter pending in juvenile court.”	Agree in part. The committee has withdrawn the language permitting the right to inspect juvenile court files to attorneys in non-related judicial or administrative proceedings.
2.	Ms. Tricia McCoy Supervising Clerk, Juvenile Division Superior Court of Kern County	A	Y	No comment.	No response necessary.
3.	Hon. Brian J. Back Presiding Juvenile Judge of the Superior Court of Ventura County	A	Y	No comment.	No response necessary.
4.	Cheryl A. Geyerman, Esq. Chair, Appellate Court Committee San Diego County Bar Association	AM	Y	1. The amendment does not go far enough. We suggest the rule also give an appellate project attorney (e.g., from Appellate Defenders, Inc.) such access. The confidentiality of the records will not be compromised because project staff act within the attorney-client relationship. In addition the projects have a duty to assist potential appellants to perfect their appeals. Often a project will have to	1. Agree in part. We agree that the staff and supervisory attorneys of an appellate project or program may share inspection of the juvenile court file if necessary for the preparation of the appeal. We disagree that the amendment has to specify that staff and supervisory attorneys are authorized to inspect

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				<p>assemble pleadings from a file to demonstrate the merit of a petition seeking constructive filing of a “late” notice of appeal.”</p> <p>2. The language appears to expand record inspection rights to counsel who may be representing a juvenile court party in other pending judicial or administrative proceedings, which might include unrelated lawsuits. While the need for counsel in the juvenile court proceedings themselves, whether at the lower or appellate court level, for access to the files is indisputable, we think sensitive records should not be subject to open-ended inspection by counsel in other proceedings without the protection of a court order. We suggest amending the second sentence in proposed rule 1423(b) to read: “Counsel who are entitled to inspect juvenile court records include any trial court or appellate attorney representing a party to the juvenile court proceeding in the underlying juvenile proceeding.”</p>	<p>the file. Such specification is not provided for the other counsel who have the right to inspect, and who also routinely work within agencies, projects, or programs that require attorney supervision and staff support.</p> <p>2. Agree in part. The committee has withdrawn the language permitting the right to inspect juvenile court files to attorneys in non-related judicial or administrative proceedings.</p>
5.	Diana L. Doramae, Esq.	A	Y	No comment.	No response necessary.

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	Chair of the Executive Committee of the Family Law Section of the State Bar of California				
6.	Gary Seiser, Esq. Senior Deputy County Counsel San Diego County	AM	Y	Amending rule 1423 to provide access to juvenile court records to an attorney who represents a party to the dependency action in any other judicial or administrative proceeding is in direct conflict with Welfare and Institutions Code section 827 and would be found void. It is the juvenile court that must determine whether that attorney in the other proceeding has a need that balanced against the right of privacy, justifies disclosure. I recommend the second sentence of the first paragraph of rule 1423(b) be amended to read “Counsel who are entitled to inspect juvenile court records include any juvenile court or appellate attorney representing a party to the juvenile court proceeding, in either the underlying juvenile proceeding or the related appeal.”	Agree in part. The committee has withdrawn the language permitting the right to inspect juvenile court files to attorneys in non-related judicial or administrative proceedings.
7.	Carole Greeley, Esq. California Appellate Defense Counsel, Bay Area Chapter	AM	Y	<ol style="list-style-type: none"> 1. The proposed language is too broad and should be modified to restrict access to juvenile records to any attorney representing a party to the juvenile court proceeding, whether at the superior Court level or on appeal. 2. I suggest that you amend rule 39.1(d) to say “notwithstanding rules 16(c), 37(a) and 44.5. 	<ol style="list-style-type: none"> 1. Agree in part. The committee has withdrawn the language permitting the right to inspect juvenile court files to attorneys in non-related judicial or administrative proceedings 2. Agree
8.	Janet G. Sherwood, Esq. California Appellate Defense	AM	Y	The proposed language would authorize a personal injury attorney in a dog bite case to have access to the	Agree in part. The committee has withdrawn the language permitting the right

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	Counsel, Bay Area Chapter			juvenile court file. Unless that attorney is also representing a party in the dependency case, there is no justification for compromising the privacy interests of the child or other family members. The appellate or writ attorney represents the party in a writ or appeal arising out of that same juvenile court case which is why that person should have access to the juvenile court file. I do not think lawyers who represent parties in other proceedings should have the same access.	to inspect juvenile court files to attorneys in non-related judicial or administrative proceedings.
9.	Meredith L. Fahn California Appellate Defense Counsel, Bay Area Chapter	AM	Y	<p>The proposed change to rule 1423 is beneficial to the extent it seeks to enable attorneys for parties to a juvenile dependency proceeding to have access to records in other proceedings concerning a child who is a subject of the juvenile dependency proceeding. As drafted, however, the proposed language can be construed to mean that attorneys for parties to all proceedings relating to the child can have access to the juvenile dependency court files. This is problematic because it undermines the important policy objective of protecting confidentiality of information concerning children.</p> <p>In the interest of clarity, the following language is suggested in lieu of the current draft revision to rule 1423: “Counsel who are entitled to inspect juvenile court records include any attorney representing a party to the juvenile court proceeding, whether at the Superior Court level or on appeal. The juvenile court records that may be inspected by such attorney include records of the underlying juvenile proceeding</p>	Agree in part. The committee has withdrawn the language permitting the right to inspect juvenile court files to attorneys in non-related judicial or administrative proceedings.

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				or records of any other pending or administrative proceeding.”	